

## **DRAFT RECORD OF DECISION**

### **Southern Edwards Plateau Habitat Conservation Plan Issuance of an Incidental Take Permit for Nine Federally Endangered Species in Texas**

#### **Introduction**

The U.S. Department of the Interior, U.S. Fish and Wildlife Service (Service) is responsible for issuing Incidental Take Permits (ITPs) as authorized pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (16 USC 1531-1544, Act). This document records the decision of the Service to issue an ITP to the City of San Antonio and Bexar County (collectively the Applicants) for implementation of the Southern Edwards Plateau Habitat Conservation Plan (SEP-HCP).

The SEP-HCP is a regional conservation program developed by the Applicants in coordination with the Service to protect endangered species in central Texas. The requested permit will authorize incidental take of nine endangered species (collectively the Covered Species) and includes two birds: golden-cheeked warbler (*Setophaga* [= *Dendroica*] *chrysoparia*, GCWA) and black-capped vireo (*Vireo atricapilla*, BCVI), and seven karst invertebrates (collectively the Covered Karst Invertebrates): *Rhadine exilis* (no common name), *R. infernalis* (no common name), Helotes mold beetle (*Batrisodes ventyivi*), Government Canyon Bat Cave spider (*Neoleptoneta microps*), Madla cave meshweaver (*Cicurina madla*), Government Canyon Bat Cave meshweaver (*C. vespera*) and Bracken Cave meshweaver (*C. venii*) over a period of 30 years.

We prepared this Record of Decision (ROD) in compliance with the agency decision-making requirements of the National Environmental Policy Act of 1969, as amended (40 CFR 1505.2, NEPA). The purpose of this ROD is to document the Service's decision regarding the selection of the preferred alternative as evaluated in our final Environmental Impact Statement (EIS). This ROD describes (1) the Service's decision; (2) the proposed action; (3) alternatives considered in the EIS, including the preferred alternative; (4) key issues; (5) associated impacts, mitigation, and findings, providing all practicable means to avoid and minimize environmental harm; (6) public involvement; and (7) the conclusion. The Service will not issue an ITP until at least 30 days after publication in the *Federal Register* of the notice of availability for the final EIS.

#### **The Decision**

The decision is hereby made to issue an ITP to the Applicants for implementation of the SEP-HCP. We intend to issue an ITP allowing the Applicants to implement the preferred alternative (Proposed SEP-HCP Alternative) based on a thorough review of the alternatives and their environmental consequences as described in the final EIS. This alternative has been determined to be economically feasible. Implementation of this decision entails issuance of the ITP, including all terms and conditions governing the permit, and requires adherence to all of the avoidance, minimization, and mitigation measures specified in the SEP-HCP to offset impacts to the Covered Species to the maximum extent practicable, including the described monitoring and adaptive management measures. The HCP meets all issuance criteria for an ITP. Since implementation of the preferred alternative would result in incidental take and the resulting impacts, we prepared a Biological Opinion (BO) prior to making a permit decision in

accordance with §7(a)(2) of the Act. Our BO documents our determination that issuance of the ITP will not jeopardize the continued existence of federally listed species, and will not destroy or adversely modify designated critical habitat.

### **Alternatives Considered**

Five alternatives, including the No Action Alternative, and their environmental consequences were evaluated in the draft EIS released December 19, 2014. Publication of a Notice of Availability of the draft HCP and draft EIS, and a request for comments, initiated a 90-day public comment period (79 FR 75830). Several elements were common to all action alternatives and included interagency coordination, NEPA compliance, and protection of endangered species and cultural resources. The following is a brief summary of the alternatives considered. A longer summary and complete description is included in the final EIS.

No Action Alternative: Under the No-Action Alternative, the Service would not issue an incidental take permit to the Applicants for the SEP-HCP. Individual permitting actions will occur at the level and scope of an individual project. Mitigation requirements will be individually negotiated with the Service.

Proposed Action: Our preferred alternative is the proposed HCP with a 30-year term, as described in the final EIS, which provides for the issuance of an ITP to the Applicants for incidental take of Covered Species that may occur as a result of Covered Activities. This alternative includes a number of measures to avoid, minimize, and mitigate impacts to the Covered Species, including over 30,000 acres of preserves for the Covered Species, avoiding the bird's breeding seasons to reduce direct impacts, and conducting extensive karst feature surveys to minimize direct impacts to karst invertebrates.

10% Participation Alternative: This alternative assumes 10 percent of the development activities requiring an ITP for the Covered Species over the next 30 years will participate in the SEP-HCP. The incidental take request represents 10 percent of the projected GCWA and BCVI habitat loss and 10 percent of the loss of potential habitat for the Covered Karst Invertebrates resulting from development within the Enrollment Area over the next 30 years.

Single-County Alternative: The Single-County Alternative proposes the preserve system will be located within Bexar County and up to 10 miles beyond Bexar County. This alternative proposes the same amount of take for the Covered Species as the Proposed SEP-HCP Alternative; however, it proposes one-half of the preserve for GCWA and BCVI and greater participation fees.

Increased Mitigation Alternative: This alternative incorporates the same mitigation for the BCVI, higher proposed mitigation for the GCWA, and two times the required amount of preserve needed to achieve downlisting for the Covered Karst Invertebrates than that of the Proposed SEP-HCP Alternative. Additionally, this alternative calls for 60 percent of the GCWA preserve within Bexar County or within 5 miles of the county border. Like the Proposed SEP-HCP Alternative, the Increased Mitigation Alternative assumes 50 percent of the development activities requiring an ITP for the Covered Species over the next 30 years will participate in the SEP-HCP, which represents 50 percent of the projected GCWA and BCVI habitat loss and 20 percent of the loss of potential habitat supporting the Covered Karst Invertebrates resulting from development within the Enrollment Area over the next 30 years.

## **Rationale for Decision**

We intend to select the preferred alternative (Proposed SEP-HCP Alternative) for implementation based on multiple environmental and social factors, including potential impacts and benefits to covered species and their habitat, the extent and effectiveness of minimization and mitigation measures, and social and economic considerations. We did not choose the No Action Alternative because we must issue an ITP when issuance criteria have been met.

In order for us to issue an ITP, we must determine that the HCP meets the criteria set forth in 16 U.S.C. §1539(a)(2)(A) and (B). We have made that determination. These criteria, and how the HCP satisfies these criteria, are summarized below:

### **1. The taking will be incidental.**

We have determined that the Covered Activities, including public or private land development projects; construction, maintenance, and/or improvement of roads, bridges, and other transportation infrastructure; and installation and/or maintenance of utility infrastructure are lawful activities. We find, therefore, that the take of Covered Species that may occur as a result of the Covered Activities will be incidental to otherwise lawful activities and will occur primarily in the form of harm and harassment through loss or impacts to habitat.

### **2. The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such takings.**

The Applicants have committed to implement a wide variety of conservation measures intended to minimize and mitigate the impacts of incidental taking that may result from the Covered Activities. These measures include:

#### GCWA and BCVI

- Establishing a preserve system of up to 23,430 acres of GCWA habitat and up to 6,600 acres of BCVI habitat over the term of the ITP.
- Mitigating at a ratio (acres of habitat preserved to acres impacted) of 2 acres preserved for every 1 acre of direct impact to GCWA or BCVI habitat and at a ratio of 0.5:1 for indirect impacts (that is half an acre for every acre of indirect impact). Indirect impacts are those that occur in GCWA or BCVI habitat adjacent to destroyed or modified habitat that will be assessed for a distance of 300 feet from the edge of the direct impacts.
- Requiring HCP Participants to abide by seasonal clearing restrictions to avoid direct impacts to GCWAs and BCVIs during their breeding season.
- Requiring Participants to follow Texas Forest Service's or a professional arborist's guidelines for the prevention of oak wilt when clearing or trimming trees within Enrolled Properties.
- Developing a public education and outreach program to educate landowners and residents about GCWAs and BCVIs and the HCP.

#### Covered Karst Invertebrates

- Establishing a preserve system of at least 1,000 acres of new karst preserves.

- Prohibiting Participants from conducting activities close to known species localities until the downlisting criterion (per the Service's Bexar County Karst Invertebrates Recovery Plan) for the number and type of karst preserves in a Karst Fauna Region is achieved.
- Issuing karst species Participation Certificates only after a required minimum amount of mitigation for all of the Covered Karst Invertebrate species has occurred.
- Designing preserves in accordance with the Service's Karst Preserve Design Recommendations including, but not limited to: perpetual protection, management and monitoring; meeting the Service's standards for a high or medium quality cave preserve; occupancy by one or more of the Covered Karst Invertebrates; contributing to recovery.
- Sponsoring studies to help address important information gaps in range and distribution, abundance, and conservation status of the Covered Karst Invertebrates.
- Searching existing public and private protected lands for occupied caves.
- Assisting landowners of occupied caves in non-protected status with management, including perimeter fencing or cave gating, fire ant control, restoration of native vegetation within the drainage basin of a cave, and reducing threats.
- Providing access, on a limited basis, for research projects that will contribute to the understanding of the biology, ecology, and conservation of the Covered Karst Invertebrates.
- Funding karst conservation independent of actual levels of karst participation.

These measures, and the associated monitoring, and adaptive management strategies described in the SEP-HCP are intended to avoid and minimize harm to the Covered Species and mitigate for any unavoidable take. Proposed mitigation is commensurate with the level of take anticipated over the duration of the proposed permit. The Applicants have also included provisions for reasonably foreseeable changed circumstances. These strategies ensure that the effects of potential taking resulting from changed circumstances will also be minimized and mitigated to the maximum extent practicable. We find, therefore, that through implementation of the SEP-HCP the Applicants have planned to avoid, minimize, and mitigate for impacts from incidental take to the maximum extent practicable.

### **3. The applicant will develop an HCP and ensure that adequate funding for the HCP will be provided.**

The SEP-HCP Applicants have developed and committed to a funding plan for implementation of the HCP. This plan includes both public and private funding. The funding plan assumes that: (1) all biological goals and objectives are achieved, particularly with respect to the sizing and distribution of preserves; (2) preserve management and monitoring activities include components of a typical management plan for avian and karst preserves that would satisfy the adaptive management process; (3) preserve acquisitions and use of the ITP's take authorization occur at a constant rate across the ITP duration; and (4) estimated costs and revenues are initially estimated in 2011 dollars and incorporate inflation at 3 percent per year. The information included in the Funding Plan (Appendix F) was prepared during the research and planning stages of the SEP-HCP development process, and used the best available science and information available at the time of preparation (2011). Updating the information does not materially change the fundamentals of the SEP-HCP Funding Plan since inflation was incorporated. The only modification made to the Funding Plan and associated appendix was establishment of the endowment start date to Year 1 instead of Year 11.

**4. The taking will not appreciably reduce the likelihood of the survival and recovery of any listed species in the wild.**

The legislative history of the Act establishes the intent of Congress that this issuance criteria be based on a finding of “not likely to jeopardize” under section 7(a)(2) (see 50 CFR 402.02). As a result, issuance of the permit has been reviewed by the Service under section 7 of the Act. Our Biological Opinion concluded that issuance of the ITP will not jeopardize the continued existence of the Covered Species in the wild, as described above. Additionally, no critical habitats are expected to be destroyed or adversely modified as part of this ITP. The Biological Opinion also analyzes other listed and candidate species within the planning area and concludes that the direct and indirect effect of issuance of the ITP will not appreciably reduce the likelihood of survival and recovery of other listed species or destruction or adverse modification of any designated critical habitat within the action area. We find, therefore, that the effects resulting from the Covered Activities described in the HCP will not appreciably reduce the likelihood of survival and recovery of the Covered Species in the wild.

**5. The applicant agrees to implement other measures that the Service requires as being necessary or appropriate for the purposes of the HCP.**

The Service assisted the Applicants in developing their HCP, commented on draft documents, participated in numerous meetings and conference calls, and worked closely with the Applicants throughout the planning and document preparation phases of the proposal to ensure that the conservation needs of the Covered Species would be assured and recovery would not be precluded by the Covered Activities. The SEP-HCP incorporates our recommendations for minimization and mitigation of impacts, as well as steps to monitor the effects of the HCP and ensure success. Chapter 11 of the HCP addresses administration and implementation of the HCP, including that the Applicants will ensure that avoidance and minimization measures will be properly implemented. The Applicants will submit an annual report to the Service each year the permit is in effect describing implementation of avoidance, monitoring, minimization, and mitigation measures described in the HCP. Coordination mechanisms have been designed to ensure that changes in conservation measures can be implemented if proposed measures prove ineffective (though adaptive management measures) or if changed circumstances occur during the duration of the permit. It is our position that no additional measures are required to implement the intent and purpose of the SEP-HCP to those detailed in the HCP and its associated ITP.

The Service included the five-point policy as an addendum to the Habitat Conservation Planning Handbook on July 3, 2000 (65FR 35242). The policy emphasizes the development of biological goals and objectives, adaptive management strategies, monitoring provisions, permit duration considerations, and public participation into HCPs as a way to increase their effectiveness. The SEP-HCP addresses each of the criteria for permit issuance and incorporates all aspects of the five-point policy. These elements are described in Section 5 (Biological Goals and Objectives); Section 9 (Adaptive Management and Monitoring); and Section 2 (Permit Duration and Public Involvement).

The FEIS identified four alternatives in addition to the proposed HCP and issuance of the requested incidental take permit. The Alternatives are generally described in Chapter 2 of the FEIS, and detailed description and analysis of these Alternatives are provided in Chapter 4 of the FEIS. While the Service’s environmentally preferred alternative is the Increased Mitigation Alternative, the costs

associated with implementing this alternative were cost prohibitive; therefore, the Applicants could not guarantee adequate funding would be available.

Section 9 of the Act and its implementing regulations prohibit the “taking” of threatened or endangered species. However, under limited circumstances, we may issue permits to take listed wildlife species incidental to, and not the purpose of, otherwise lawful activities. To minimize impacts, the Applicants must comply with the following terms and conditions:

- A. General conditions set out in subpart d of 50 CFR 13, and specific conditions contained in Federal regulations cited in block #2, above, are hereby made a part of this permit. All activities authorized herein must be carried out in accordance with and for the purposes described in the application submitted. Continued validity, or renewal, of this permit is subject to compliance with all applicable conditions, including the filing of all required information and reports; and full implementation of the SEP-HCP.
- B. Acceptance of the permit serves as evidence that the Permittees (Bexar County and the City of San Antonio) agrees to abide by the terms and conditions of this permit and all applicable sections of Title 50 CFR Parts 13 and 17 pertinent to issued permits. Terms and conditions of the permit are inclusive. Any activity, prohibited under 16 USC 1538, not specifically permitted is prohibited. Violations of permit terms and conditions could result in your permit being suspended or revoked. Violations of your permit’s terms and conditions that contribute to a violation of the Endangered Species Act of 1973, as amended (Act), could also subject you to criminal or civil penalties.
- C. The person listed in box 8 must sign for this permit to acknowledge receipt and signify agreement to fully abide by and implement this permit. An original signature copy must be returned to the Regional Office listed below in condition U.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

- D. This permit only authorizes incidental take of the following nine endangered species (Covered Species): two birds: golden-cheeked warbler (*Setophaga [=Dendroica] chrysoparia*, GCWA) and black-capped vireo (*Vireo atricapilla*, BCVI), and seven karst invertebrates (collectively the Covered Karst Invertebrates): *Rhadine exilis* (no common name), *R. infernalis* (no common name), Helotes mold beetle (*Batrisodes venyivi*), Government Canyon Bat Cave spider (*Neoleptoneta microps*), Madla cave meshweaver (*Cicurina madla*), Government Canyon Bat Cave meshweaver (*C. vespera*), and Braken Cave meshweaver (*C. venii*).
- E. Incidental take of the Covered Species would occur from lawful, non-federal activities including: public or private land development projects; construction, maintenance, and/or improvement of roads, bridges, and other transportation infrastructure; and installation and/or maintenance of utility infrastructure (Covered Activities, described in more detail in the SEP-HCP). The SEP-HCP includes a 7-county area: Bandera, Bexar, Blanco, Comal, Kendall, Kerr, and Medina counties. Incidental take coverage will: 1) only be offered to Participants in the jurisdictions of Bexar County and the City of San Antonio, including current and future portions of the City’s extra-territorial jurisdiction (ETJ), which is expected to expand into Bandera, Bexar, Kendall and Medina counties; 2) only be allowed within preserves established in Comal County, since Comal County has its own

ITP to cover incidental take; and 3) be provided within any SEP-HCP preserves established within Bandera, Bexar, Blanco, Kendall, Kerr, and Medina counties (Permit Area).

- F. Upon locating a dead, injured, or sick individual of the Covered Species, or any other endangered or threatened species, the Permittee is required to contact the U.S. Fish and Wildlife Service's (Service) Law Enforcement Office in San Antonio, Texas, (210-681-8419) for care and disposition instructions. Extreme care should be taken in handling sick or injured individuals to ensure effective and proper treatment. Care should also be taken in handling dead specimens to preserve biological materials in the best possible state for analysis of cause of death. In conjunction with the care of sick or injured endangered or threatened species, or preservation of biological materials from a dead specimen, the Permittees and any contractor/subcontractor has the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.
- G. Conditions of this permit shall be binding on, and for the benefit of, the Permittees and any successors and assigns. If this permit needs to be transferred due to a change in ownership, the transfer will be accomplished in accordance with 50 CFR 13.25. Any change in the names, addresses, or other administrative correction or alteration of the permit will be accomplished in accordance with 50 CFR 13.23(c). Any construction activities proposed or in progress under the original permit may not be interrupted provided the conditions of this permit are being followed.
- H. If, during the tenure of this permit, the Covered Activities or the extent of the habitat impact is altered, such that there may be an increase in the anticipated take of any Covered Species, the Permittees are required to contact the Service's Austin Ecological Services Office (Austin ESFO) and obtain an amendment to this permit before commencing any construction or other activities that might result in take beyond that authorized by this permit. If authorized take is exceeded, all activities that are shown to cause take must immediately cease and any take above that authorized by this permit shall be reported to the Austin ESFO (512/490-0057) within 48 hours. This situation will require an amendment of the permit and SEP-HCP.
- I. If actions associated with implementation of the SEP-HCP are shown to result in incidental take of listed species not covered by this permit, those activities that are shown to cause take must immediately cease and any take that has occurred shall be reported to the Austin ESFO (512-490-0057) within 48 hours.
- J. The Permittees will coordinate with the Service to develop an appropriate form and content for SEP-HCP Participation Agreements (defined in the SEP-HCP) that will address, among other items, the special conditions described below. The general form and content of Participation Agreements will be approved by the Service prior to completing the enrollment process for the first Participant; however, the form of Participation Agreements may be subject to change as mutually agreed to by the Permittees and the Service.

- K. Participants will follow the Texas Forest Service's or professional arborist's guidelines for the prevention of oak wilt when clearing or trimming trees within their Enrolled Property (defined in the SEP-HCP).
- L. The following activities described in the SEP-HCP will require a Service issued 10(a)(1)(A) scientific research and recovery permit that specifically covers the species under consideration for:  
1) habitat assessments conducted for the GCWA or BCVI submitted by Applicants applying for coverage under the SEP-HCP, 2) karst feature species surveys submitted by Applicants applying for coverage under the SEP-HCP, 3) site visits to requested enrollment properties by the Permittees (or their contracted consultants) to visually confirm habitat conditions stated within participation applications, and 4) any monitoring or research conducted on preserves that is expected to cause incidental take.
- M. The SEP-HCP (Section 13) describes the procedures the Permittees have agreed to undertake to address the following changed circumstances: 1) the Service publishes a new or revised version of a final recovery plan for a Covered Species, 2) protected habitat in SEP-HCP preserves is temporarily lost or degraded due to catastrophic events, 3) protected habitat in SEP-HCP preserves is permanently lost or degraded due to global climate change or other landscape-scale changes, 4) a Covered Species becomes delisted, 5) a Covered Species is declared extinct, 6) a listed karst species is subject to a taxonomic change, 7) upfront mitigation requirements or Conservation Baselines for Covered Karst Invertebrate Species cannot be met, 8) the Covered Karst Invertebrates range is expanded into Comal and/or Medina counties, 9) the Comal County Regional HCP is not implemented, and 10) inadequate funding for Plan implementation.
- N. To qualify for No Surprises Assurances, the Permittee must implement all provisions included in the SEP-HCP and incidental take permit that address such circumstances. If a changed circumstance has not been addressed by the SEP-HCP or incidental take permit, the Service will not require additional conservation or mitigation measures of the Permittee, provided that the terms of the SEP-HCP and incidental take permit are being fully implemented.

To fully implement the Southern Edwards Plateau Habitat Conservation Plan (SEP-HCP), the following species-specific avoidance, minimization, and mitigation measures are required:

#### Golden-Cheeked Warbler and Black-Capped Vireo

- O. The Permittees are authorized to impact no more than 9,371 acres of GCWA habitat and 2,640 acres of BCVI habitat.
- P. Mitigation for direct impacts to GCWA and BCVI will be at a ratio of 2:1 (2 acres of protected habitat for each acre of habitat directly impacted); and indirect impacts will be mitigated at a ratio of 0.5:1 (0.5 acre of protected habitat for each acre of habitat indirectly impacted).
- Q. Incidental take is also authorized on GCWA and BCVI preserves. Such take would occur as part of a Service approved management plan and would be considered temporary or beneficial in nature.



Examples include vegetation manipulation within BCVI habitat needed to occasionally set back the successional stage of the woody vegetation; limited thinning within dense GCWA habitat to open up areas for enhancing oak regeneration; construction or maintenance of boundary fencing, access roads, fire breaks, and other similar infrastructure that facilitates effective and responsible preserve management.

- R. Participants conducting Covered Activities within their Enrolled Property will abide by the following seasonal clearing restrictions: March 1 through July 31 for activities affecting GCWA habitat and between March 15 through August 31 for activities affecting BCVI habitat. No removal of woody vegetation that would cause the loss or degradation of suitable habitat for the GCWA or BCVI may occur during these periods.
- a. Other construction-related activities that **do not involve the removal of woody vegetation** may occur during these periods provided that (1) the construction activities are part of a continuous set of activities that began during the non-breeding season; (2) are performed in a reasonably prompt and expeditious manner; and (3) the Participant is complying with all of the terms and conditions of the Participation Agreement.
  - b. The Permittees may grant exceptions to these restrictions if a Service protocol presence/absence survey for GCWA or BCVI is conducted during that species' breeding season indicating that the species is not present within 300 feet of the planned activity, and an onsite permitted biologist verifies on a daily basis during the Covered Activity that no GCWA or BCVI is within 300 feet of the planned activity. An applicable species survey for this purpose must be conducted in the same year as the start of the planned clearing or construction activity.
- S. At full implementation, 23,500 acres of GCWA habitat and 6,600 acres of BCVI habitat will be protected and managed in perpetuity. Preserves will meet the following minimum criteria. All preserves will be in compliance with either Section 6 or 7 of the SEP-HCP, depending on the target species.

#### Karst Invertebrates

- T. The Permittees are authorized to impact no more than 10,234 acres of karst zones 1 and 2 and 10,852 acres of karst zones 3 and 4.
- U. The SEP-HCP will not offer karst Participation Certificates for any of the Covered Karst Species until the Permittees have secured some level of up-front mitigation for all of the Covered Karst Invertebrate Species. The level and type of mitigation obtained for each species will vary, due to the distribution and variability of known locations for each of the species. However, for the more common species like *R. infernalis*, *R. exilis*, and *C. madla* the expectation is that a medium or high quality karst preserve will be established. The Permittees will work with the Service in determining when the appropriate level of up-front mitigation has occurred.

- V. Incidental take is also authorized on karst preserves. Such take would occur as part of a Service approved management plan and would be considered temporary or beneficial in nature. Examples include installation of cave gates or other protective measures in or around an occupied karst feature and the occasional need to construct or maintain boundary fencing, access roads, fire breaks, and other similar infrastructure that facilitates effective and responsible preserve management.
- W. At full implementation the Permittees will purchase at least 1,000 acres of new recovery-quality karst preserves no later than 30 years from the date this permit is issued.
- X. In accordance with Section 3.2.3.2 of the SEP-HCP, for the purpose of evaluating participation Occupied Cave Zones will be established around the entrance(s) of each karst feature found within a property to be enrolled or within 750 feet outside of a property to be enrolled that contains one or more of the Covered Karst Invertebrates.
- a. **Occupied Cave Zone A** – Includes the area generally within 345 feet of the entrance(s) to a karst feature that is occupied by one or more of the Covered Karst Invertebrates. The extent of this zone encompasses approximately 8.5 acres around a feature.
  - b. **Occupied Cave Zone B** – Includes the area generally between 345 feet and 750 feet of the entrance to a karst feature occupied by one or more of the Covered Karst Invertebrates. This zone (in combination with Zone A) is intended to encompass all or most of the surface and subsurface resources needed to maintain the long-term viability of an occupied karst feature.
  - c. The term “generally” in conditions X.a. and X.b. refers to some possible instances where the configuration of the Occupied Cave Zone may not always be a circle, that is it may not always be exactly 345 feet or 750 feet from the entrance, depending on the zone. For example, to protect the cave footprint or cave cricket foraging area the configuration of the Occupied Cave Zones may need to be adjusted; however, the total acreage within the zone will be the same regardless of the configuration.
  - d. The configuration around each entrance(s) may not always be a circle, so may not always be 345’ or 750’ from the entrance. For example, adjusting the configuration of the Occupied Cave Zones to protect the cave footprint or cave cricket foraging area, but maintaining the 8.5 acre or 40 acre total setback.
  - e. Participants will establish legally enforceable boundaries around the Occupied Cave Zones within their property, as provided below.
  - f. Within 60 days after the execution of a Participation Agreement, Participants must submit proof to the Permittees that the boundaries of these avoidance zones have been established by an instrument (e.g. recorded through a plat, deed restriction, easement, or other legally enforceable document) recorded in the real property records for the county or counties where the Enrolled Property is located. The legal instrument must restrict all direct surface and subsurface disturbance within the Occupied Cave Zone(s) until such time (if ever) incidental take authorization within that Occupied Cave Zone(s) has been obtained. Such instruments

must effectively restrict mineral development by joinder of mineral owner, unless Participant provides a report or letter from a licensed geologist indicating that the likelihood of mineral development on such Enrolled Property is “so remote as to be negligible.”

- g. Participants will be required to install fencing and sedimentation controls around Occupied Cave Zones and designated critical habitat areas that are subject to avoidance measures prior to the initiation of Covered Activities.

Y. In accordance with Section 3.2.3.2 of the SEP-HCP, if the conservation baseline for one or more of the Covered Karst Invertebrates within an Occupied Cave Zone are not met within that Karst Fauna Region, then no Covered Activities will occur within Occupied Cave Zone A or B. Conservation baselines are based on the Service’s downlisting criteria for the Bexar County Karst Invertebrates and require a minimum number of high and medium quality karst preserves for each of the Covered Karst Invertebrates.

Z. For Participants in compliance with the terms and conditions of their Participation Agreement and this permit, incidental take authorization for the Covered Karst Invertebrates is automatically provided within an Enrolled Property for areas that may occur outside of Occupied Cave Zones and non-

accessible designated critical habitat areas, including take that may be associated with karst features accidentally discovered during construction.

AA. Any portion of a property with designated critical habitat for the Covered Karst Invertebrates may not participate in the SEP-HCP without first consulting with the Service under section 7 or 10 of the Act.

#### Preserves

BB. Prior to preserve acquisition, baseline conditions, as described in Section 9 of the SEP-HCP, will be fully assessed and submitted to the Service for review, approval, and allocation of credits, if appropriate.

CC. Secondary uses (such as, public access or those rights retained by a landowner in a conservation easement) of SEP-HCP preserve lands may be allowed if:

- a. these uses are conducted in a manner consistent with the conservation of the GCWA, BCVI, or Covered Karst Invertebrates;
- b. these uses are conducted in accordance with an adaptive management plan that identifies and substantially minimizes potentially related threats to the species;
- c. these uses are approved by the Service; and
- d. in the case of public access, sufficient baseline data has been collected, so that any future uses may be compared to the baseline to show any effects from those uses.

- DD. Every preserve or cluster of preserves will have a management plan as more specifically described in Section 9 of the SEP-HCP. All management plans will be reviewed and approved by the Service, prior to acquisition of a new preserve. Any updates or revisions to the management plans will also be reviewed and approved by the Service.
- EE. Endowments will be established for each preserve to fund the perpetual management and monitoring of the preserve for the benefit of the target species.
- FF. All preserves will be in compliance with either Section 6 or 7 of the SEP-HCP, depending on the target species.

## ANNUAL REPORT

An annual report will be submitted by June 1 of the year following the reporting year to the addresses below and will describe the previous calendar year's activities in compliance with this permit and Section 12 of the SEP-HCP. Annual reports will be submitted each year for the duration of this permit area.

U.S. Fish and Wildlife Service  
Austin Ecological Services Field Office  
10711 Burnet Road, Suite 200  
Austin, Texas 78758

U.S. Fish and Wildlife Service, Region 2  
Branch of Environmental Review  
P.O. Box 1306, Room 6034  
Albuquerque, New Mexico 87103

## Public Comments on the EIS

Formal scoping for the EIS began on April 27, 2011, with publication in the *Federal Register* of a Notice of Intent (NOI) to prepare the EIS (76 FR 23619). The NOI described the proposed federal action (issuance of an incidental take permit for the SEP-HCP) and the purpose and need for the action. The NOI also announced public scoping meetings that would be held between May 1 and June 15, 2011, in various locations throughout the proposed 7-county plan area. Five scoping meetings were held in Bandera, Boerne, Blanco, Kerrville, and Helotes, Texas, between June 6, 2011, and June 14, 2011, to engage the community, share information, and ask the community for their input. The official scoping comment period for the EIS closed July 26, 2011.

A Notice of Availability of the draft HCP and accompanying draft EIS was published in the *Federal Register* on December 19, 2014 (79 FR 75830). Two information meetings on the draft documents were held in the cities of Helotes and Kerrville, Texas, on February 3 and 4, 2015, respectively. The public comment period closed on March 19, 2015.

One federal agency and one Tribe responded to our request for comments. The Environmental Protection Agency had comments on several sections of the draft EIS including air quality, environmental justice, and Tribal coordination. The Caddo Nation of Oklahoma stated the project

would not impact sights of interest to the Caddo Nation. Comments were also received from 110 Non-Governmental Organizations and members of the general public. Please refer to Chapter 2 and appendices B through F of the FEIS for more detailed information concerning public involvement and a record of all comments received during the scoping and public comment periods. We believe these comments are addressed and reasonably accommodated in the final documents.

### **For More Information**

You may obtain copies of the final documents by going to *<http://www.fws.gov/southwest/es/AustinTexas/>*. Alternatively, you may obtain a compact disk with electronic copies of these documents by writing to Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road Suite 200, Austin TX 78758; by calling (512) 490-0057; or by faxing (512) 490-0974. Written comments may also be submitted to Mr. Adam Zerrenner.

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Deputy Regional Director  
U.S. Fish and Wildlife Service  
Southwest Region  
Albuquerque, New Mexico

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Date